

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104, 137C.6, 137D.2 and 137F.2, the Department of Inspections and Appeals hereby amends Chapter 30, “Food and Consumer Safety,” Iowa Administrative Code.

These amendments implement 2016 Iowa Acts, chapter 1086, an Act relating to the licensure of home food establishments. Pursuant to the legislation, home food establishments are now called home bakeries. These amendments reflect updates to the Food Code issued by the federal Food and Drug Administration (FDA) with changes through 2015. Amendments to Chapter 31, “Food Establishment and Food Processing Plant Inspections,” published as **ARC 3188C** herein, adopt the 2013 FDA Model Food Code with Supplement. These amendments also clarify provisions to reduce confusion for establishments under the jurisdiction of other food licensing agencies, such as the Iowa Department of Agriculture and Land Stewardship.

Prior to publication of this Notice of Intended Action, the Department distributed a draft of these amendments for comment to industry associations, local contracting health departments, and food safety educators. No comments were received.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2017, as **ARC 3052C**. No comments were received by the Department during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 10A.104 and 137F.2.

These amendments shall become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 481—30.1(10A,137C,137D,137F) as follows:

**481—30.1(10A,137C,137D,137F) Food and consumer safety bureau.** The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), home ~~food establishments~~ bakeries, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for ~~targeted small business certification~~, social and charitable gambling, and amusement devices. Separate chapters have been established for the administration of targeted small business certification (481—Chapter 25), social and charitable gambling (481—Chapters 100 to 103, 106, and 107), and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D and 137F.

ITEM 2. Adopt the following new definitions of “Catering,” “Personal chef,” and “Unattended food establishment” in rule **481—30.2(10A,137C,137D,137F)**:

“*Catering*” means the preparation of food for distribution to an individual, business or organization for exclusive service to the individual’s, business’s or organization’s nonpaying guests, employees or members.

“*Personal chef*” or “*hired cook*” means a person who provides food preparation services in a private home or at a private party for a client and the client’s nonpaying guests. “Personal chef” or “hired cook” does not include a person who provides the ingredients intended to be used in food preparation.

“*Unattended food establishment*” means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public.

“Controlled entry,” for the purposes of the definition of “unattended food establishment,” means selective restriction or limitation of access to a place or location.

ITEM 3. Amend rule ~~481—30.2(10A,137C,137D,137F)~~, definitions of “Food establishment,” “Food processing plant,” and “Home food establishment,” as follows:

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school and the Iowa juvenile home. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by ~~481—subrules 69.28(6) and 70.28(6).~~ “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home ~~food establishment~~ bakery pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home or private party where a personal chef or hired cook is providing food preparation services to a client and the client’s nonpaying guests.
- ~~8. 9.~~ A private home that receives catered or home-delivered food.
- ~~9. 10.~~ Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
- ~~10. 11.~~ Supply vehicles or vending machine locations.
- ~~11. 12.~~ Establishments that are exclusively engaged in the processing of meat and poultry which and are licensed pursuant to Iowa Code section 189A.3.
- ~~12. 13.~~ The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
  - Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
  - Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
  - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.
- ~~13. 14.~~ Premises covered or operations that are exclusively engaged in the processing of milk and milk products, are regulated by Iowa Code section 192.107 with, and have a milk or milk products permit issued by the department of agriculture and land stewardship.
- ~~14. 15.~~ Premises or operations which that are exclusively engaged in the production of shell eggs, are regulated by or subject to Iowa Code section 196.3, and which have an egg handler’s license.
- ~~15. 16.~~ The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.
- ~~16. 17.~~ Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:
  - The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;

- Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and
- The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

“*Food processing plant*” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
- Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

3. Premises or operations that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.

4. Premises or operations that are exclusively engaged in the processing of milk or milk products, are regulated by Iowa Code section 192.107, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

5. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler’s license.

“*Home food establishment bakery*” means a business on the premises of a residence that is operating as a home-based bakery where ~~potentially hazardous bakery~~ baked goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed ~~\$20,000~~ \$35,000. “Home food establishment bakery” does not include: ~~a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments.~~

1. A food establishment;
2. A food processing plant;
3. A residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations;
4. A residence that prepares or distributes honey;
5. A residence that distributes shell eggs;
6. A residence that prepares nonhazardous foods for sale at a farmers market; or
7. A residence that prepares nonhazardous baked goods sold directly from the residence. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.

ITEM 4. Amend subrule 30.4(4) as follows:

**30.4(4)** ~~Home food establishments bakery~~. The license fee for a home food establishments bakery is \$33.75 (Iowa Code section 137D.2(1)).

ITEM 5. Amend subrule 30.8(5) as follows:

**30.8(5)** ~~Home food establishments bakeries and vending machines~~. Home food establishments bakeries and vending machines shall be inspected at least once every 24 months.

ITEM 6. Amend subrule 30.10(1) as follows:

**30.10(1)** *Immediate suspension of license*. To the extent not inconsistent with Iowa Code chapters 17A, 137C, 137D, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments and ~~home food establishments bakeries~~. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures

of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,137D,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.